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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAMUEL L. GENSAW III, et al.,

CASE NO.: C-07-3009-TEH

Plaintiffs,

**ANSWER TO COMPLAINT
[Jury Trial Requested]**

vs.

DEL NORTE COUNTY UNIFIED
SCHOOL DISTRICT, et al.,

Defendants.

17 Defendant Del Norte County Unified School District, a political subdivision of the
18 State of California; Robert Berkowitz, sued in his professional capacity as a member of
19 the Del Norte County Unified School District Board; Thomas Cochran, sued in his
20 official capacity as a member of the Del Norte County Unified School District Board;
21 Faith Crist, in her official capacity as a member of the Del Norte County Unified School
22 District Board; William Maffett, in his official capacity as a member of the Del Norte
23 County Unified School District Board; Jan Moorehouse, in her official capacity as a
24 member of the Del Norte County Unified School District Board; William Parker, in his
25 official capacity as a member of the Del Norte County Unified School District Board,

1 answer plaintiff's complaint filed herein, as modified by the Court's Order partially
 2 granting and partially denying defendants' Motion to Dismiss as follows:

3 **GENERAL ALLEGATIONS**

4 Responding to ¶ 1 of the Complaint, defendants admit that plaintiffs are seeking
 5 declaratory and injunctive relief arising out of plaintiffs' challenge to the June 9, 2005
 6 decision by the Del Norte County Unified School District to close the middle school
 7 grades of Margaret Keating Elementary School and deny that plaintiffs constitute a
 8 certifiable class.

9 Responding to ¶ 2 of the Complaint, defendants admit that at the time the
 10 complaint was filed approximately 67% of the students at Margaret Keating were Native
 11 Americans and admit a Yurok structure is maintained at the Margaret Keating School, but
 12 deny that it constitutes "a model Yurok village." Defendants deny the allegations of the
 13 third and fourth sentences of ¶ 2, as pled. Defendants admit on information and belief the
 14 allegations of the fifth and sixth sentences, and affirmatively allege such facilities and
 15 opportunities remain available. Defendants lack sufficient information or belief upon
 16 which to admit or deny the remaining allegations in the paragraph, and based on such
 17 lack of information or belief, defendants deny each and every other allegation contained
 18 therein.

19 Responding to ¶ 3 of the Complaint, defendants deny the allegations in the first
 20 sentence. As to the second sentence, defendants admit on information and belief that
 21 Native Americans comprise approximately 15% of the students in the overall district and
 22 deny on information and belief the remaining allegations contained in said paragraph.

23 Responding to ¶ 4 of the Complaint, defendants admit that the Board of the Del
 24 Norte County Unified School District approved the closure of the middle school grades at
 25 Margaret Keating School and to reassign the students in those grades to Crescent Elk
 26

1 Middle School. Further responding to said paragraph, defendants deny the remaining
 2 allegations contained therein.

3 Responding to ¶ 5 of the Complaint, defendants admit that budget considerations
 4 factored in part into the closing of the middle school grades at Margaret Keating and
 5 affirmatively allege that educational opportunities at other schools also factored into the
 6 decision. Defendants admit that the alleged, but not actual, justification is contrary to
 7 recommendations made by a “Blue Ribbon Facilities Committee.” Further responding to
 8 said paragraph, defendants deny the remaining allegations contained therein.

9 Responding to ¶ 6 of the Complaint, defendants admit that a letter from the United
 10 States Department of Education Office of Civil Rights (“OCR”) states that the OCR
 11 conducted an investigation of the District’s decision to close the middle school grades at
 12 Margaret Keating in response to a complaint, that the letter stated that the OCR found
 13 that the District did not comply with Title VI and “the regulation,” based on the negative
 14 determination that “there was not sufficient evidence to establish that the decision was
 15 made for reasons other than national origin,” deny that it made an affirmative and express
 16 determination that the Board acted with discriminatory intent against Margaret Keating
 17 Native American students on the basis of race in violation of Title VI or any applicable
 18 regulation, and deny the remaining allegations in this paragraph. In addition, defendants
 19 affirmatively allege that the OCR letter is does not create the source of the rights sued
 20 upon by the plaintiff, is not relevant precedent in this proceeding, and that the standards
 21 applicable to OCR regulatory determinations are not the same standards which apply to a
 22 private cause of action. Further responding to said paragraph, defendants deny the
 23 remaining allegations contained therein.

24 Responding to ¶ 7 of the Complaint, defendants deny each and every allegation set
 25 forth therein.

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Responding to ¶ 8 of the Complaint, defendants deny each and every allegation set forth therein.

Responding to ¶ 9 of the Complaint, defendants deny each and every allegation set forth therein.

Responding to ¶ 10 of the Complaint, defendants admit that plaintiffs seek the relief described therein, and deny that plaintiffs are entitled to the relief sought. Further responding to said paragraph, defendants deny the remaining allegations contained therein.

JURISDICTION

Responding to ¶ 11 of the Complaint, defendants admit that plaintiffs allege jurisdiction under 42 U.S.C. §1983, the 14th Amendment to the United States Constitution, Title V1 of the Civil Rights Act 1964, 42 U.S.C. §2000d et seq., and California Government Code §11135, et seq., and deny that plaintiffs are entitled to relief under said provisions.

Responding to ¶ 12 of the Complaint, defendants admit that the cited provisions generally confer subject matter jurisdiction, and that Rule 23(b)(2) of the Federal Rules of Civil Procedure authorizes class actions, and deny that plaintiffs are entitled to relief under any of these specified provisions, and deny that plaintiffs are a certifiable class.

VENUE

Responding to ¶ 13 of the Complaint, defendants admit that venue is proper.

INTRADISTRICT TRANSFER

Responding to ¶ 14 of the Complaint, defendants admit that this case is assignable to the San Francisco division or the Oakland division pursuant to Civil L.R.C. 3-2(d).

PLAINTIFFS

Responding to ¶ 15 through ¶ 24 of the Complaint, inclusive, defendants lack sufficient information or belief upon which to admit or deny the allegations set forth in

1 these paragraphs, and based on such lack of information or belief, defendants deny each
 2 and every allegation contained therein.

3 Responding to ¶ 25 through ¶ 33 of the Complaint, inclusive, defendants admit the
 4 allegations set forth therein.

5 **CLASS ACTION ALLEGATIONS**

6 Responding to ¶ 34 and ¶ 35 of the Complaint, inclusive, defendants admit that
 7 plaintiffs seek class certification under Federal Rule of Civil Procedure 23(a)(b)(2), and
 8 deny that plaintiff's qualify for class certification.

9 **ALLEGATIONS PERTAINING TO DEFENDANTS**

10 Responding to ¶ 36 of the Complaint, the District admits that it receives federal
 11 funding as alleged. Further responding to said paragraph, defendants deny on
 12 information and belief the remaining allegations contained therein.

13 Responding to ¶ 37 of the Complaint, defendants deny each and every allegation
 14 set forth therein.

15 Responding to ¶ 38 of the Complaint, defendants deny each and every allegation
 16 set forth therein.

17 Responding to ¶ 39 of the Complaint, defendants admit Margaret Keating was, at
 18 the time the complaint was filed the only school that taught sixth, seventh and eight
 19 grades in the Klamath community. Further responding to said paragraph, defendants
 20 deny on information and belief the remaining allegations contained therein.

21 Responding to ¶ 40 of the Complaint, defendants admit the allegations set forth
 22 therein.

23 Responding to ¶ 41 of the Complaint, defendants lack sufficient information or
 24 belief upon which to admit or deny the allegations set forth in this paragraph, and based
 25 on such lack of information or belief, defendants deny each and every allegation
 26 contained therein.

1 Responding to ¶ 42 of the Complaint, defendants admit the allegations set forth
 2 therein.

3 Responding to ¶ 43 of the Complaint, defendants admit that the Blue Ribbon
 4 Facilities Committee, in the Blue Ribbon Report, stated that “[t]he largest savings would
 5 be realized from closing an in-town school, assuming that there will be a minimum
 6 change in the school-age population with the opening of the casino resort,” admit that the
 7 Committee’s report stated that one of its recommendations was to “consider changing
 8 Mountain to a K-5 school,” and noted that the District was currently busing children into
 9 town and would be able to transport students in grades six through eight without any
 10 additional expense, admit that the Committee also recommended busing students in
 11 grades six through eight from Margaret Keating into Crescent City, deny that the
 12 Committee noted that the that busing Margaret Keating to Crescent Elk would require
 13 additional expense, and deny that it identified the closing of grades six through eight of
 14 Margaret Keating as the least effective cost-saving measure.

15 Responding to ¶ 44 of the Complaint, defendants admit that the School Board held
 16 meetings with parents of the children enrolled in the three schools identified by the Blue
 17 Ribbon Facilities Committee for possible closure at various times, and deny that the
 18 District was left with no available cost-saving option other than closure of grades six
 19 through eight at Margaret Keating due to the order in which the meetings were held.
 20 Defendants lack sufficient information or belief upon which to admit or deny the
 21 remaining allegations set forth in this paragraph, and based on such lack of information
 22 or belief, defendants deny each and every allegation contained therein.

23 Responding to ¶ 45 of the Complaint, defendants deny that Margaret Keating
 24 parents were not given any informed opportunity to attend School Board meetings at
 25 which possible school closure was discussed, and lack sufficient information or belief
 26 upon which to admit or deny the remaining allegations set forth in this paragraph, and

1 based on such lack of information or belief, defendants deny each and every allegation
2 contained therein.

3 Responding to ¶ 46 of the Complaint, defendants deny the allegations set forth in
4 this paragraph, as pled.

5 Responding to ¶ 47 of the Complaint, defendants deny that the Native American
6 community, as well as the general Klamath community, “overwhelmingly opposed”
7 closure of the Margaret Keating middle school grades, admit that some members of the
8 Klamath community expressed concern about the possible closure of the middle school
9 grades, and lack sufficient information or belief upon which to admit or deny the
10 remaining allegations set forth in this paragraph, and based on such lack of information
11 or belief, defendants deny each and every allegation contained therein.

12 Responding to ¶ 48 of the Complaint, defendants admit that the School Board
13 unanimously approved the transfer of sixth through eighth grade students at Margaret
14 Keating to Crescent Elk Middle School, effective in the Fall of the 2005-2006 school
15 year, and lack sufficient information or belief upon which to admit or deny the remaining
16 allegations set forth in this paragraph, and based on such lack of information or belief,
17 defendants deny each and every allegation contained therein.

18 Responding to ¶ 49 of the Complaint, defendants deny each and every allegation
19 set forth therein.

20 Responding to ¶ 50 of the Complaint, defendants lack sufficient information or
21 belief to admit or deny the allegations contained therein, and based on such lack of
22 information or belief, defendants deny each and every allegation set forth therein.

23 Responding to ¶ 51 of the Complaint, defendants lack sufficient information or
24 belief to admit or deny the allegations contained therein, and based on such lack of
25 information or belief, defendants deny each and every allegation set forth therein.

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1 Responding to ¶ 52 of the Complaint, defendants admit that they did not follow
 2 the recommendations of the Blue Ribbon Finance Committee, and affirmatively allege
 3 they had no affirmative duty to follow such recommendations. Further responding to the
 4 allegations, defendants lack sufficient information or belief to admit or deny the
 5 allegations contained therein, and based on such lack of information or belief, defendants
 6 deny each and every remaining allegation set forth therein.

7 Responding to ¶ 53 of the Complaint, defendants admit that the subject OCR letter
 8 stated that the District violated Title VI Regulation 34 C.F.R. §100.3(a) based on the
 9 negative determination that “there was not sufficient evidence to establish that the
 10 decision was made for reasons other than national origin,” admit that, based on this
 11 negative finding, found that the District did not comply with Title VI and “the
 12 regulation,” deny that it made an affirmative and express determination that the Board
 13 discriminated against Margaret Keating Native American students on the basis of race in
 14 violation of Title VI, admit that it noted that its decision noted it was unable to find any
 15 documentation or records prepared prior to the Board’s decision that explained why the
 16 Board reassigned students from Margaret Keating, but did not implement the other
 17 recommendations, admit that the decision stated that there was insufficient evidence to
 18 substantiate the reasons stated by the Board for its decision, and deny the remaining
 19 allegations in this paragraph. In addition, defendants affirmatively allege that the OCR
 20 letter does not create the source of the rights sued upon by the plaintiff, is not relevant
 21 precedent in this proceeding, and that the standards applicable to OCR regulatory
 22 determinations are not the same standards which apply to a private cause of action.

23 Responding to ¶ 54 of the Complaint, defendants deny each and every allegation
 24 set forth therein.

25 Responding to ¶ 55 of the Complaint, defendants deny each and every allegation
 26 set forth therein.

1 Responding to ¶ 56 of the Complaint, defendants lack sufficient information or
 2 belief to admit or deny the allegations of this paragraph, and based on such lack of
 3 information or belief, defendants admit each and every approximate percentage alleged
 4 therein.

5 Responding to ¶ 57 of the Complaint, defendants admit the stated findings of the
 6 Native American Languages Act, deny that said Act creates any private cause of action,
 7 and lack sufficient information or belief to admit or deny the remaining allegations
 8 contained in this paragraph, and based on such lack of information and belief, defendants
 9 deny each and every allegation set forth therein.

10 Responding to ¶ 58 of the Complaint, defendants lack sufficient information or
 11 belief to admit or deny the allegations contained in this paragraph, and based on such lack
 12 of information and belief, defendants deny each and every allegation set forth therein.

13 Responding to ¶ 59 of the Complaint, defendants deny that the closure of Margaret
 14 Keating middle school grades diminishes these students' abilities to be full and active
 15 members of their tribe, and lack sufficient information or belief to admit or deny the
 16 remaining allegations contained in this paragraph, and based on such lack of information
 17 and belief, defendants deny each and every allegation set forth therein.

18 Responding to ¶ 60 of the Complaint, defendants admit a Yurok structure is
 19 maintained at the Margaret Keating School, but deny that it constitutes "a model Yurok
 20 village." and admit on information and belief that children visited Margaret Keating
 21 school, on occasion, to learn about Yurok culture, and affirmatively allege such
 22 opportunities remain today. Defendants deny each and every remianing allegation
 23 contained therein.

24 Responding to ¶ 61 of the Complaint, defendants deny each and every allegation
 25 set forth therein.

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1 Responding to ¶ 62 of the Complaint, defendants deny each and every allegation
 2 set forth therein.

3 Responding to ¶ 63 of the Complaint, defendants deny each and every allegation
 4 set forth in the first sentence. Defendants lack sufficient information or belief to admit or
 5 deny the remaining allegations contained in the second and third sentences, and based on
 6 such lack of information and belief, defendants deny each and every allegation set forth
 7 therein.

8 **COUNT ONE: FOURTEENTH AMENDMENT EQUAL PROTECTION CLAIM**

9 Responding to ¶ 64, defendants incorporate herein by reference as though fully set
 10 forth herein all prior paragraphs contained in this answer.

11 Responding to ¶ 65 of the Complaint, defendants deny each and every allegation
 12 set forth therein.

13 Responding to ¶ 66 of the Complaint, defendants admit that they deny plaintiffs
 14 contentions and deny the remaining allegations in this paragraph.

15 Responding to ¶ 67 of the Complaint, defendants deny each and every allegation
 16 set forth therein.

17 **COUNT TWO: TITLE VI CLAIM**

18 Responding to ¶ 68 of the Complaint, defendants incorporate herein by reference
 19 as though fully set forth herein all prior paragraphs contained in this answer.

20 Responding to ¶ 69 of the Complaint, defendants deny each and every allegation
 21 set forth herein.

22 Responding to ¶ 70 of the Complaint, defendants admit that defendants deny
 23 plaintiffs' contentions, and deny the remaining allegations in this paragraph.

24 Responding to ¶ 71 of the Complaint, defendants deny each and every allegation
 25 set forth therein.

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1 **COUNT THREE: CAL. GOV. CODE §1135 CLAIM**

2 [Claim Dismissed Pursuant to Order Filed April 18, 2008.]

3 **AFFIRMATIVE DEFENSES**4 AS AND FOR A FIRST AFFIRMATIVE DEFENSE, defendants allege that
5 plaintiffs have failed to state a cause of action upon which relief can be granted.6 AS AND FOR A SECOND AFFIRMATIVE DEFENSE, defendants allege that
7 they are immune from suit pursuant to the 11th Amendment of the United States
8 Constitution.9 AS AND FOR A THIRD AFFIRMATIVE DEFENSE, defendants allege on
10 information and belief that plaintiffs complaint is barred by the applicable statute of
11 limitations.12 AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, defendants allege that
13 the defendants' acts were privileged under applicable statutes and case law.14 AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, defendants allege that the
15 claim for violation of 42 U.S.C. §1983 is barred and subsumed by plaintiffs' claim for
16 violation of Title VI.17 AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, defendants allege that the
18 named plaintiffs do not qualify as a certifiable class under applicable federal law.19 AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, defendants allege that
20 plaintiffs lack standing under applicable federal law.21 AS AND FOR AN EIGTH AFFIRMATIVE DEFENSE, defendants cannot fully
22 anticipate all affirmative defenses that may be applicable to this action; accordingly,
23 defendants expressly reserve the right to assert additional defenses if and to the extent
24 such affirmative defenses become applicable throughout the pendency of this action.

25 Defendants demand a jury.

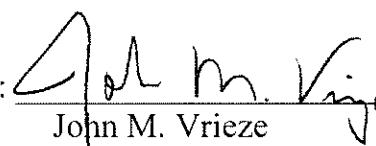
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1 WHEREFORE, defendants pray that plaintiffs take nothing by way of their
2 complaint, and further request costs of suit incurred, attorneys fees, and such other relief
3 as the Court deems just and proper.

4

5 DATED: April 28, 2008

MITCHELL, BRISSO, DELANEY & VRIEZE

6 By: 

7 John M. Vrieze

8 William F. Mitchell

9 Attorneys for Defendants

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